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AMENDED IN SENATE JUNE 19, 1997

AMENDED IN ASSEMBLY MAY 27, 1997

AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## ASSEMBLY BILL

No. 411

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**Introduced by Assembly Members Wayne and Shelley**  
**(Coauthors: Assembly Members Bowen, Cunneen, Davis,**  
**Keeley, Knox, Kuehl, Lempert, and Scott)**  
(Coauthors: Senators Alpert, Craven, Karnette, Solis, and  
Watson)

February 20, 1997

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An act to amend Sections 115880, 115885, and 115915 of the Health and Safety Code, relating to public beaches.

### LEGISLATIVE COUNSEL'S DIGEST

AB 411, as amended, Wayne. Beach sanitation: posting.

Existing law requires the State Department of Health Services to adopt regulations establishing minimum standards for the sanitation of public beaches. Violation of these regulations adopted by the department is a crime.

This bill would require these regulations to require the testing of the waters adjacent to all public beaches, as defined, for *microbiological contaminations, including, but not limited to*, total coliform, fecal coliform, and enterococci bacteria, to establish protocols for determining the location of monitoring

sites and monitoring frequency based on risks to public health, and for *public notification of health hazards, including, but not limited to*, the posting, closing, and reopening of public beaches, and to require that public beaches, *with certain exceptions*, be tested for *microbiological contaminations, including, but not limited to*, total coliform, fecal coliform, and enterococci bacteria on a weekly basis from April 1 to October 31, inclusive, of each year if certain conditions are met. By changing the definition of a crime, this bill would impose a state-mandated local program.

This bill would, *subject to appropriation of sufficient funds*, require local health officers to be responsible for testing waters adjacent to public beaches within their jurisdiction. This bill would require the local health officer to immediately test the waters adjacent to a public beach and to take related action in the event of a known *untreated* sewage release, and in the event of ~~a~~*an untreated* sewage release that is known to have reached recreational waters adjacent to a public beach, would require the local health officer to immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards. By increasing the duties of local health officers, this bill would impose a state-mandated local program.

Existing law requires the health officer having jurisdiction of the area in which a public beach is created to close, or restrict the use of, the public beach if he or she finds any violation of the standards.

This bill would, instead, authorize the health officer to close, or restrict the use of, the public beach if he or she finds that a violation exists.

Existing law requires the department, upon investigation of a complaint, to close, or restrict the use of, any public beach if it finds that a violation exists.

This bill would, instead, authorize the department to close, or restrict the use of, a public beach if it finds that a violation exists.

Existing law requires the local health officer to post a beach with conspicuous warning signs whenever the beach fails to meet certain bacteriological standards, and it is determined



that the cause of the elevated levels constitutes a public health hazard.

This bill would, in addition, require the local health officer to post a beach with conspicuous warning signs, as described, whenever the beach fails to meet the standards developed by the department established pursuant to this bill.

Existing law requires each local health officer to notify the Director of Parks and Recreation when a public beach is in violation of the sanitation standards.

This bill would, instead, require the local health officer to notify the agency responsible for the operation and maintenance of the public beach within 24 hours of any public beach posting, closure, or restriction, and would, *subject to appropriation*, require the agency responsible for the operation and maintenance of the public beach to establish a telephone hotline and update it ~~daily~~ *as need to convey changes in public health risks*, to inform the public of beach postings, closures, and restrictions. By increasing the duties of the local health officer, this bill would impose a state-mandated local program.

*This bill would make any duty imposed upon a local public officer or agency pursuant to these provisions mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of those duties, and would require the director to annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.*

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that for certain mandates, no reimbursement is required by this act for a specified reason. With regard to other mandates, this bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 115880 of the Health and Safety  
2 Code is amended to read:

3 115880. (a) The department shall by regulation, in  
4 consultation with local health officers and the public,  
5 establish minimum standards for the sanitation of public  
6 beaches, including, but not limited to, the removal of  
7 refuse, as it determines are reasonably necessary for the  
8 protection of the public health and safety.

9 (b) *Prior to final adoption by the department, the*  
10 *regulations and standards required by this section shall*  
11 *undergo an external comprehensive review process*



1 *similar to the process set forth in Section 57004 of the*  
2 *Health and Safety Code.*

3 (c) The regulations shall, at a minimum, do all of the  
4 following, *by December 31, 1998:*

5 (1) Require the testing of the waters adjacent to all  
6 public beaches for *microbiological contaminants,*  
7 *including, but not limited to, total coliform, fecal*  
8 *coliform, and enterococci bacteria. The department may*  
9 *require the testing of waters adjacent to all public*  
10 *beaches for microbiological indicators other than those*  
11 *set forth in this paragraph, or a subset of those set forth*  
12 *in this paragraph, if the department affirmatively*  
13 *establishes, based on the best available scientific studies*  
14 *and the weight of the evidence, that the alternative*  
15 *indicators are as protective of the public health.*

16 (2) Establish protective minimum standards for total  
17 coliform, fecal coliform, and enterococci bacteria, *or for*  
18 *other microbiological indicators that the department*  
19 *determines are appropriate for testing pursuant to*  
20 *paragraph (1).*

21 (3) Establish protocols for all of the following:

22 (A) Determining monitoring site locations and  
23 monitoring frequency based on risks to public health.

24 (B) Making decisions regarding *public notification of*  
25 *health hazards, including, but not limited to the posting,*  
26 *closing, and reopening of public beaches.*

27 (4) Require that the waters adjacent to public beaches  
28 be tested for total coliform, fecal coliform, and  
29 ~~enterococci bacteria on a weekly basis, or as otherwise~~  
30 ~~determined by the regulations, from April 1 to October~~  
31 ~~31, inclusive, of each year if all of the following apply:~~  
32 *enterococci bacteria, or for other microbiological*  
33 *indicators that the department determines are*  
34 *appropriate for testing pursuant to paragraph (1). Except*  
35 *as set forth in paragraph (5), testing shall be conducted*  
36 *on at least a weekly basis, from April 1 to October 31,*  
37 *inclusive, of each year, beginning in 1999, if all of the*  
38 *following apply:*

39 (A) The beach is visited by more than 50,000 people  
40 annually.

1 (B) The beach is located on an area adjacent to a storm  
2 drain that flows in the summer.

3 ~~(e)~~

4 (5) *The monitoring frequency and locations*  
5 *established pursuant to this subdivision and related*  
6 *regulations may only be reduced or altered after the*  
7 *testing required pursuant to paragraph (4) reveals levels*  
8 *of microbiological contaminants that do not exceed for a*  
9 *period of two years the minimum protective standards*  
10 *established pursuant to paragraph (2).*

11 (d) The local health officer shall be responsible for  
12 testing the waters adjacent to, and coordinating the  
13 testing of, all public beaches within his or her jurisdiction.

14 ~~(d)~~

15 (e) The local health officer may meet the testing  
16 requirements of this section by utilizing test results from  
17 ~~other agencies conducting total coliform, fecal coliform,~~  
18 ~~and enterococci bacteria testing of the waters under his~~  
19 *other agencies conducting microbiological*  
20 *contamination testing of the waters under his or her*  
21 *jurisdiction.*

22 ~~(e)~~

23 (f) Any city or county may adopt standards for the  
24 sanitation of public beaches within its jurisdiction that are  
25 stricter than the standards adopted by the state  
26 department pursuant to this section.

27 ~~(f)~~

28 (g) For purposes of this section, “public beach” means  
29 any public beach located within the coastal zone, as  
30 defined in Section 30103 of the Public Resources Code.

31 (h) *Any duty imposed upon a local public officer or*  
32 *agency pursuant to this section shall be mandatory only*  
33 *during a fiscal year in which the Legislature has*  
34 *appropriated sufficient funds, as determined by the State*  
35 *Director of Health Services, in the annual Budget Act or*  
36 *otherwise for local agencies to cover the costs to those*  
37 *agencies associated with the performance of these duties.*  
38 *The State Director of Health Services shall annually,*  
39 *within 15 days after enactment of the Budget Act, file a*  
40 *written statement with the Secretary of the Senate and*

1 *with the Chief Clerk of the Assembly memorializing*  
2 *whether sufficient funds have been appropriated.*

3 SEC. 2. Section 115885 of the Health and Safety Code  
4 is amended to read:

5 115885. The health officer having jurisdiction over  
6 the area in which a public beach is created shall:

7 (a) Inspect the public beach to determine whether the  
8 standards established pursuant to Section 115880 are  
9 being complied with. If the health officer finds any  
10 violation of the standards, he or she may restrict the use  
11 of, or close, the public beach or portion thereof in which  
12 the violation occurs until ~~such time as the standard~~  
13 ~~violated the standard~~ is complied with.

14 (b) Investigate any complaint of a person of a violation  
15 of any standard established by the department pursuant  
16 to Section 115880. If the health officer finds any violation  
17 of the standards prescribed by the department, he or she  
18 may restrict the use of, or close, the public beach or  
19 portion thereof until the ~~time as the standard violated~~  
20 ~~standard~~ is complied with. If the person who made the  
21 complaint is not satisfied with the action taken by the  
22 health officer, he or she may report the violation to the  
23 department. The department shall investigate the  
24 reported violation, and, if it finds that the violation exists,  
25 it may restrict the use of or close the public beach or  
26 portion thereof until the standard violated is complied  
27 with.

28 (c) (1) Whenever a beach is posted, closed, or  
29 otherwise restricted in accordance with Section 115915,  
30 the health officer shall inform the agency responsible for  
31 the operation and maintenance of the public beach  
32 within 24 hours of the posting, closure, or restriction.

33 ~~(2) The agency responsible for the operation and~~  
34 ~~maintenance of the public beach shall establish a~~

35 (2) *The health officer shall establish a telephone*  
36 *hotline to inform the public of all beaches currently*  
37 *closed, posted, or otherwise restricted. The hotline shall*  
38 *be updated daily as needed in order to convey changes in*  
39 *public health risks.*

(d) Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.

(e) In the event of a known *untreated* sewage release, the local health officer shall immediately test the waters adjacent to the public beach and to take action pursuant to regulations established under Section 115880.

(f) Notwithstanding any other provision of law, in the event of a *an untreated* sewage release that is known to have reached recreational waters adjacent to a public beach, the local health officer shall immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards established pursuant to Section 115880.

(g) *Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.*

SEC. 3. Section 115915 of the Health and Safety Code is amended to read:

115915. (a) Whenever any beach fails to meet the ~~bacteriological standards of Section 7958 of Title 17 of the California Code of Regulations, or any of the standards~~ *bacteriological standards* established pursuant to subdivision (b) of Section 115880, the health officer shall, at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health.



(b) A warning sign shall be visible from each legal primary beach access point, as identified in the coastal access inventory prepared and updated pursuant to Section 30531 of the Public Resources Code, and any additional access points identified by the health officer.

(c) *Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.*

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

~~Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act~~

1 ~~shall become operative on the same date that the act~~  
2 ~~takes effect pursuant to the California Constitution.~~

3 *SEC. 4. No reimbursement is required by this act*  
4 *pursuant to Section 6 of Article XIII B of the California*  
5 *Constitution for certain costs that may be incurred by a*  
6 *local agency or school district because this act creates a*  
7 *new crime or infraction, eliminates a crime or infraction,*  
8 *or changes the penalty for a crime or infraction, within*  
9 *the meaning of Section 17556 of the Government Code,*  
10 *or changes the definition of a crime within the meaning*  
11 *of Section 6 of Article XIII B of the California*  
12 *Constitution.*

13 *Moreover, as to other costs, no reimbursement shall be*  
14 *made from the State Mandates Claims Fund pursuant to*  
15 *Part 7 (commencing with Section 17500) of Division 4 of*  
16 *Title 2 of the Government Code for costs mandated by*  
17 *the state pursuant to this act. It is recognized, however,*  
18 *that a local agency or school district may pursue any*  
19 *remedies to obtain reimbursement available to it under*  
20 *Part 7 (commencing with Section 17500) and any other*  
21 *provisions of law.*

22 *Also, notwithstanding Section 17580 of the*  
23 *Government Code, unless otherwise specified, the*  
24 *provisions of this act shall become operative on the same*  
25 *date that the act takes effect pursuant to the California*  
26 *Constitution.*

